

CC TO JUDGE Honorable Marsha Pechman

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WESTERN DISTRICT OF WASHINGTON  
BY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COSTCO WHOLESALE CORPORATION, a  
Washington corporation,

Plaintiff,

vs.

ROGER HOEN, VERA ING, and MERRITT  
LONG, in their official capacities as members of  
the Washington State Liquor Control Board,

Defendants, and

WASHINGTON BEER AND WINE  
WHOLESALE ASSOCIATION, a Washington  
non-profit corporation,

Intervenor Defendant.

No. 04-CV-00360-MJP

AMENDED DECLARATION OF ROBIN  
POLLARD



04-CV-00360-DECL

I, Robin Pollard, hereby declare:

1. I am over eighteen years of age, am competent to testify, and the statements  
herein are based on my personal knowledge.

2. I am Executive Director of the Washington Wine Institute, a position I have held  
for 3 months.

AMENDED DECLARATION OF ROBIN  
POLLARD -- 1

No. 04-CV-00360-MJP  
M32978-653026

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The Honorable Marsha Pechman

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AMENDED DECLARATION OF ROBIN POLLARD -- 1

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COPY

1           3.     The ability to self-distribute is absolutely vital to the economic well being of our  
2 wineries. By far the majority of our wineries produce less than 2,000 cases of wine per year.  
3 That small production quantity is not enough to gain the attention of the ever-shrinking number  
4 of distributors doing business in Washington State. Small wineries rely on their intimate  
5 relationship with their in-state retail partners. It is a valuable and mutually beneficial  
6 relationship. Because of the small production volume and narrow profit margins, many of the  
7 wineries would go out of business if they were precluded from being able to sell direct to  
8 retailers. The wineries' current ability to choose business partners works in Washington, and we  
9 urge the Court to preserve our right to self distribute.

10           4.     The Washington wine industry is a \$3 billion industry supporting 14,000 jobs  
11 statewide. It has made a significant positive impact to the state's economy, particularly in rural  
12 areas of the state. In 1981, there were 19 wineries in the state. Today, the industry has grown to  
13 the point where we have wineries in literally every corner of the state. In addition, Washington  
14 wineries purchase grapes from Washington wine grape growers of which there are  
15 approximately 350 farming operations dependent upon the health and success of our wineries for  
16 their livelihood. Therefore, any negative impact on wineries has a ripple effect on farmers as  
17 well as other businesses that service those wineries and farms.

18           5.     The Washington Wine Commission surveyed its members on October 10, 2005  
19 via email asking how many self-distribute and what this ability means to their business. The  
20 WWC received 155 responses, 147 of which indicated that they currently self-distribute all or a  
21 portion of their wines directly to in-state retailers. Only eight respondents indicated that they do  
22 not self distribute. These respondents happen to be amongst the larger wineries in the state.

23           6.     Attached hereto as Exhibits A-K are true and correct copies of letters submitted  
24 by owners and representatives of Washington State wineries, each of which identifies its author.  
25

26 AMENDED DECLARATION OF ROBIN  
POLLARD -- 2

1 I declare, under penalty of perjury under the laws of the State of Washington and the  
2 United States, that the foregoing is true and correct.

3  
4 EXECUTED this 27<sup>th</sup> day of October 2005 at Seattle, Washington.

5  
6   
7 Robin Pollard

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11 **DECLARATION OF SERVICE**

12 I, Lacey F. Hayes, hereby declare under penalty of perjury of the laws of the State of  
13 Washington that on this day I caused to be served a true and correct copy of the pleadings to  
14 which this declaration is attached, by the method indicated below, and addressed to each of the  
15 following:

16 John Guadnola Gordon, Thomas, Honeywell, Malanca, 17 Peterson & Daheim, LLP 1201 Pacific Avenue, Suite 2100 18 P.O. Box 1157 Tacoma, WA 98401-1157 19 Fax: 253-620-6565	<u>XX</u> U.S. Mail, Postage Prepaid <u>   </u> Hand Delivered <u>   </u> Overnight Mail <u>xx</u> Facsimile Transmission
20 David J. Burman Perkins Coie 1201 Third Ave., Suite 4800 21 Seattle, WA 98101-3099 Fax: 206-359-9000	<u>XX</u> U.S. Mail, Postage Prepaid <u>   </u> Hand Delivered <u>   </u> Overnight Mail <u>xx</u> Facsimile Transmission
22 Michael D. Sandler Sandler Ahern & McConaughy PLLC 23 1200 Fifth Avenue, Suite 1900 Seattle, WA 98101-3135 24 Fax: 206-346-1755	<u>XX</u> U.S. Mail, Postage Prepaid <u>   </u> Hand Delivered <u>   </u> Overnight Mail <u>xx</u> Facsimile Transmission

25  
26 AMENDED DECLARATION OF ROBIN  
POLLARD -- 3

1 David M. Hankins  
2 Martha P. Lantz  
3 Assistant Attorneys General  
4 P.O. Box 40123  
5 Olympia, WA 98504  
6 Fax: 360-665-2023

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile Transmission

7 DATED this 28th day of October 2005, at Seattle, Washington.

8   
9 Lacey F. Hayes

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26 AMENDED DECLARATION OF ROBIN  
POLLARD -- 4

No. 04-CV-00360-MJP  
M32978-653026

**October 14, 2005**

**To Whom It May Concern:**

**Yes, DeLille Cellars self distributes and we have since 1994. Self distributing in Washington represents a full one-third of our entire business and would be a devastating financial blow to us if we gave up that income. The net income difference to our business between the FOB prices we would sell our wines to a wholesale distributor for and what we sell it for at full wholesale price currently represents about \$350,000.00 per year. Losing this amount would put us out of business and eliminate seven jobs.**

**Please let me know what else we can provide to assist your efforts. Thank you.**

**I declare under penalty of perjury that the foregoing is true and correct.**

**Signed on October 14, 2005, at Woodinville, Washington.**

A handwritten signature in black ink, appearing to read "JA Soloff", with a long horizontal line extending to the right.

**Jay A. Soloff  
Owner/partner  
DeLille Cellars / Doyenne Cellars**

I have been self distributed in some part of the state for the whole time I have been in business (14 years).

Self distribution is a critical part of the wine business for smaller wineries. Even if you are distributed in some part of the state, a winery should always have the right to reserve some clients for their own servicing.

A very over-looked fact is that there are not enough distributors to handle all wineries in the state - even if a winery chose to use a distributor. Wineries in locations away from the I-5 or I-90 corridors can better service retailers closer to the winery.

For very small wineries (and of the 369 wineries approximately 75% are less than 2,000 cases), using a distributor, or being required to use a distributor would be the kiss of death from a profit standpoint.

Distributors charge approximately 25% of wholesale to distribute and this cuts directly to the bottom line. This is often a reason why smaller wineries do not choose to have a distributor.

The right for wineries to self-distribute is essential to the industry.

I declare under penalty of perjury that the foregoing is true and correct.



Don Corson  
Camaraderie Cellars

Signed at Port Angeles, Washington  
October 14, 2005

From: Susan McCrea – CoOwner, Marketing & Sales  
McCrea Cellars, Inc.

To Whom It May Concern:

McCrea Cellars been self-distributed since we started the winery in 1988, except for about six months in 1997. Washington State (in particular the greater Seattle area) is our largest single market; wholesale sales in Washington state account for more than 50% of our gross revenues.

We will never make more than five or six thousand cases a year, because we don't want to hire a large staff to do the basic winery jobs - it's what we want to do ourselves. At this small production level we cannot achieve the economies of scale that larger wineries can; our margins are thin.

We are considered an artisan winery (and in fact were named one of Wine & Spirits Magazine's top 100 wineries of the year in both 2004 and 2005) precisely because of the quality and attention to detail that is possible on a small scale. We pay premium prices for some of the best grapes in Washington state.

Forcing us to use the three-tier system could effectively put us out of business; we would be forced to give up 30% of those Washington wholesale revenues (the typical distribution discount), reducing our gross annual income by more than 15%. Our entire business model was developed on the assumption that we would be able to self-distribute in Washington.

Forcing all Washington wineries to use distributors would create chaos in other ways as well. What has remained a collaborative winemaking community would soon become fiercely competitive, as wineries compete to be included in the portfolios of the most desirable distributors. Since we would no longer be able to represent and directly sell our wines, we would become just another product in the portfolio, meaning we'd have to compete for the sales force's time and energy with wines from all over the world. This would make Washington just another market – nothing special.

Such a change would disproportionately affect small wineries, since most large wineries already use the three-tier system and have much larger margins. Our local sales depend largely on the relationships we develop calling on, sampling and delivering to our local retail and restaurant customers.

We are already a heavily-taxed industry, at both state and federal levels. Forcing us into the three-tier system would effectively tax us an additional 15%.

I declare under penalty of perjury that the foregoing is true and correct.



Signed on October, 14, 2005 at Seattle, Washington

Susan P. McCrea – CoOwner, Marketing & Sales  
McCrea Cellars  
206.938.8643

EXHIBIT C, PG. 7



To Whom it May Concern:

RE: Challenge to the right to self-distribute

First, this is an affront to the principles of free enterprise. Imagine if the state attempted to restrict the right of producers of all products to sell directly to retailers, there would be riots.

Whidbey Island Winery currently self-distributes, it is an essential part of our business plan, we also sell direct to consumers and sell through a distributor. Direct-to-retailer sales account for a minimum of 1/3 of our revenues. The math is simple, if we were forced to go through a distributor, we would lose 30% on these sales - 30% of 1/3 is 10%. What effect would the loss of 10% of revenue have on most businesses? Disaster! The actual loss would be greater, no distributor can represent our product as well as we can and personal service to retailers in our core market area is essential to maintaining the level of sales we count upon to make our business successful.

The potential loss of the right to self-distribute represents a mortal threat to the majority of the smaller wineries of Washington.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Gregory A. Osenbach', with a stylized flourish at the end.

Gregory A. Osenbach

Signed on October 14, 2005 at Langley, Washington

Isenhower Cellars is a small winery founded, owned, and run by my wife Denise and me. The loss of the ability to sell wine directly to license holders (retailers, grocery stores, and restaurants) would impact our winery directly and would be a severe cataclysm to small wineries, wine shops, restaurants, and grocery stores throughout Washington State and especially in Eastern Washington.

We self-distribute to our customers because the distributors in Eastern Washington are very large corporations that do a very poor job selling small quantities of wine from small wineries. Isenhower Cellars used to be represented by Odom Corporation in Eastern Washington. Odom had a few corporate mergers and became a huge distributor of wine and beer. We soon were lost in their sales book, the Odom Sales Representatives knew nothing about our wines and our sales by Odom went down dramatically. Many wine shops and restaurants in Walla Walla, Dayton, and the Tri-Cities complain to us they could not get our wine from Odom. So we left Odom and started self distributing.

Isenhower Cellars does many wine dinners in the Seattle area. Often we bring wine from past vintages or wines that are not in distribution to these dinners as a special treat. The restaurant buys the wine directly from Isenhower Cellars. The loss of the legal right to sell wine directly to the restaurant would very much end the fun of these wine dinners.

As of October 14, 2005 Isenhower cellars has sold 120 cases of wine directly to wine shops, grocery stores, and restaurants in Walla Walla, Columbia County, and the Tri-Cities. Loss of these direct sales would decrease our gross revenue by \$15,840. The greater loss would be loss of sales from tourists that have our wine in a local restaurant or wine bar and then come to the winery to purchase wine directly from us. I cannot estimate the sales impact but it would be large.

There is a poorly performing distribution network in Eastern Washington. If Isenhower Cellars (and all the other 70+ wineries) could not self-distribute, how would all the wineries get our wines to local restaurants, wine shops, and grocery stores that serve the thousands of tourists that come for the wine? The loss of our ability to self-distribute would be a terrible impact on the experience of wine tourists as they visit local wine bars and restaurants and as a result dramatically impact the economy of Walla Walla and Columbia County. The loss of tourism dollars would be a severe loss of tax dollars as well. Sunset Magazine just named Walla Walla as the West best Wine Destination. If local restaurants and wine bars could not buy local wines then Walla Walla would cease to be a wine destination.

I declare under penalty of perjury that the foregoing is true and correct.



Brett H. Isenhower

Signed on October, 14, 2005 at Walla Walla, Washington.

**Yes to self-distribution.**

I absolutely love what I do. I, a person with few resources, am able to produce a product that is agriculture-based and aesthetic. I am a producer, someone who actually makes a product literally from the ground up. This is becoming increasingly rare in our society (driven I suspect by corporate efficiency).

**To lose the right to self-distribute would be discriminatory and harmful to my business.**

I cannot afford to add 30% to the price of my wine. I have conscientiously tried to keep my prices at a shelf-price of just under \$20. Going through a distributor I would have to lose \$52. per case in order to keep my wine at the current price. That equals \$26,000 per year in gross sales (\$52 times 500 cases) that I would lose. That is more money than I take home from this business.

Small owner-operated wineries are more apt to support our local farms, especially those in the fledgling Puget Sound AVA. As a board member of the Puget Sound Wine Growers Association, it is our shared view that growing grapes in Puget Sound is healthy for the land, for our neighbors and good for business. We depend on our ability to sell direct to retail accounts.

*I just want to be able to make the best wine possible with my limited resources, to service my market as directly as possible, to take and place orders over a handshake, and to know that I am part of my community; and that I can afford to be in business.*

I declare under penalty of perjury that the foregoing is true and correct.

*Ronald*

**Ronald Irvine**  
**Vashon Winery**

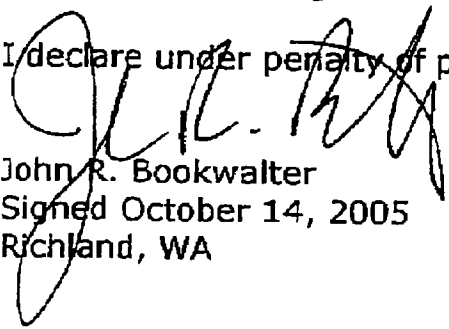
EXHIBIT F, PG. 10

October 14, 2005

To Whom It May Concern:

On several occasions over the twenty two years that Bookwalter Winery has been in business, we have self distributed directly to accounts when a distributor was not able or was unable to cover an account for various reasons (geographical challenges, product challenges, sales rep challenges etc.). Also, before I returned to the winery, my father put several "direct deals" together with various restaurants and hotels that literally kept him afloat during the difficult early years in the Washington wine industry. The option and ability to be able to self distribute is a lynch pin for the "survival" of small wineries in Washington State and should be vigorously defended.

I declare under penalty of perjury that the forgoing is true and correct.




John R. Bookwalter  
Signed October 14, 2005  
Richland, WA

October 14, 2005

To Whom It May Concern:

Yes, we self-distribute. Because of our limited production of less than 500 cases annually, we are too small to sell to distributors economically, so it is our only means of wholesale distribution. Without self-distribution we would likely be out of business as we would have no means of selling to in-state retailers.

I declare under penalty of perjury that the foregoing is true and correct.

  
Roger O. Cockerline

Signed on October 14, 2005 at Walla Walla, WA.

To whom it may concern:

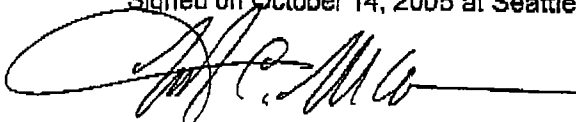
I am responding to the question asking if our company self-distributes and the impact it would have on the wine industry if it was eliminated.

Yes, we do self-distribute!! This is important for us in very small markets where there is no distributor or the distributor in that area does not want to carry our wines. It impacts areas like Aberdeen, Lyle, or the Northeast section of Washington State where it is tough to get a distributor to drive 1 case out to an account. Small restaurants that would like to serve small hand-crafted Washington wine would not be able to get those wines anymore.

Another issue is self-distributing to events, tastings, and wine dinners. Self distributing to winery events help to pay for staffing events and lets the wineries bring the correct wines that would be a part of the event. Sometimes, distributors are out of products and then they are not available for the consumers to taste or buy. Eliminating self-distributing would deter wineries from participating in events and wine dinners, because they can't afford to have staff on hand.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on October 14, 2005 at Seattle, Washington.

A handwritten signature in black ink, appearing to read 'Ken McCabe', with a long horizontal line extending to the right.

Ken McCabe  
President  
Corus Estates & Vineyards

EXHIBIT I, PG. 13

Betz Family Winery has been self distributing in Washington State since 1999. Our self distributed wine in state makes up about one third of our total sales revenue. It is a very important part of our business plan.

We appreciate the individual contact we have with all our restaurant and wine shop accounts that self distributing allows us to have. If we had to use a distributor we would have to lay off or cut back hours for key employees who make our deliveries, and raise prices due to lost revenue from selling at a reduced, distributor price.

It is absolutely key to our business to self distribute.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

*Catherine A Betz*

Signed on October 14, 2005 at Redmond, WA

Cathy Betz  
President, Betz Family Winery LLC  
cathy@betzfamilywinery.com  
425 861 9823

To Whom it May Concern: Subject: Self distribution of wine to retail accounts by wineries

'Self-distribution' to retail accounts by wineries in Washington State is a very important business option for small wineries. There are a limited number of wine distributors in Washington State and their main objective is to make money selling beer and wine. As a result most do not feel it is worth while "representing" a small account. In fact, if most of the small wineries in Washington were forced by law, to have to depend on a 'distributor' to sell their product, most of the small wineries would quickly go out of business.

A 'distributor' is considered a 'representative' of the winery in Washington State. The distributors do not represent any part of a winery except how much and how fast they can sell a product. They put the best selling products ahead of any other in their product line up. Distributors do not work on behalf of any winery, only themselves.

If Washington State makes it mandatory for wineries to sell through a distributor only the largest of the wineries will profit. Only the wineries that can post products at large allotments to retail accounts, and retail focus will quickly shift to a limited number of wines that can be sold by the case stack or pallet

Washington State would quickly lose it's wonderful offerings of so many varietals we have worked so hard on promoting if all wine sales to retail accounts were left to distributors. The boutique wineries would not stand a chance.

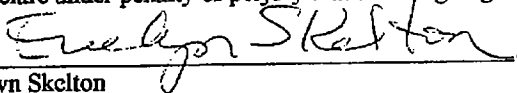
The plain fact is most distributors can pick and choose which wineries and wines they want to sell. All distributors are not equal. Not all distributors will agree to carry a wineries full line up, only those wines it is going to make the most amount of money from.

I am a representative for a small winery that was bonded in 1986. This winery has used both self-distribution and distributors for the last 20 years. As the 'contact' and local distributor for this winery I see and hear all the complaints retail accounts have with the distributors they buy wine from. The number one complaint is lack of service or the inability of a distributor to obtain a wine that is not currently bringing in the most sales. Self- distribution allows the winery to have personal contact with retail accounts, a very important concept for the small business. Self-distribution also allows the winery to respond to any problems or complaints in a quick and knowledgeable way, should a problem with the product develop.

Taking the option of self- distribution out of the hands of the business making the product makes no sense at all. Who will benefit from this idea? The retailer? No. The wineries? No. The large distributors.....most likely.

Evelyn (Eppie) Skelton, owner/mgr/vintner  
Oakwood Cellars Winery  
40504 N Demoss Rd  
Benton City, WA 99320  
509-588-5332

"I declare under penalty of perjury that the foregoing is true and correct."

  
Evelyn Skelton

"Signed on this day October 14, 2005, Benton City, Washington, Benton County